

**SAMPLE**  
(Agreement to be tailored to project)  
Former 37<sup>th</sup> Street School  
**PURCHASE AND SALE AGREEMENT**

Document Number

Name and Return Address:  
City of Milwaukee  
DCD - Real Estate Section  
Attn: Real Estate Manager  
809 North Broadway  
Milwaukee, WI 53202-3617

Tax Key Nos.: 366-0384-110-1

Recording Area

AGREEMENT, By and between the **CITY OF MILWAUKEE**, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, ("Seller"), having its office at 809 North Broadway in the City of Milwaukee ("City"), State of Wisconsin, and \_\_\_\_\_, ("Buyer") located at \_\_\_\_\_, WITNESSETH:

WHEREAS, In furtherance of the objectives of, and pursuant to Resolution No. \_\_\_\_\_ adopted by the Seller's Common Council on \_\_\_\_\_, Seller has offered to sell and the Buyer is willing to purchase certain real property at 1715 North 37<sup>th</sup> Street ("Property") and more particularly described in **Exhibit A** annexed hereto and made a part hereof, and to improve the Property for and in accordance with this Agreement:

NOW, THEREFORE, In consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

**SEC. 1. PROJECT DESCRIPTION**

Buyer agrees to redevelop the Property as follows and as outlined in Buyer's submission dated \_\_\_\_\_ that was provided in response to Seller's property listing ("Project"):

- a. Rehabilitate the existing building for use as \_\_\_\_\_.
- b. Provide \_\_\_\_ spaces of on-site parking for residents and visitors.
- c. Improve site by removing excess paving, planting grass, vegetable gardens or rain gardens, replacing the existing chain-link fencing with ornamental fencing and landscaping perimeter as required by the City zoning code.
- d. Other \_\_\_\_\_
- e. If using WHEDA credits: Operate the residential component of the Project as affordable housing units according to Section 42 of the U.S. Code for the duration of the compliance period.

**SEC. 2. BUYER ACTIONS**

(a) In connection with the Project, the Buyer shall:

1. Submit final plans to the Seller's Department of City Development ("DCD") for approval prior to closing as defined in Section 4 ("Closing") for the Property ("Final Plans"). Final Plans must conform to preliminary plans approved by the Seller and shall incorporate changes recommended as part of Seller's approval. Final Plans shall be submitted to the Seller's DCD Real Estate Section prior to Buyer's application for building permits.
2. Submit a final construction budget ("Final Budget") and evidence of full Project financing in a form satisfactory to the Seller DCD Real Estate Section prior to Closing.
3. Commence construction of the Project within thirty (30) days following Closing.
4. Completed construction of the Project within eighteen (18) months following Closing, subject to force majeure delays, and other delays not within the control of the Buyer.

(b) Buyer covenants and agrees that no additional buildings, structures, or other similar improvements shall be constructed on the Property without the prior written approval of the Seller, including without limitation because of enumeration, any addition to or expansion of any principal building currently located on or presently proposed for construction on the Property or any accessory building to such principal building.

(c) Buyer agrees to comply with City's Small Business Enterprise (SBE) policy and shall make best faith efforts for SBE participation that is at 25% of Project construction costs and 18% of Project professional services. Buyer shall contact Seller's Office of Small Business Development ("OSBD") prior to Closing and obtain a list of Seller-certified SBEs. Buyer shall execute an SBE agreement with Seller prior to Closing. After completion of the Project, Buyer shall report on its use of SBE's to DCD's Real Estate Office in terms of the total number of SBE contractors used and the dollar volume of such contracts. Such information shall be provided in writing prior to or with Buyer's request for a Certificate of Completion ("Certificate") pursuant to Section 7 of this Agreement.

### **SEC. 3. PURCHASE PRICE & EARNEST MONEY**

(a) Purchase Price. The "Purchase Price" for the Property shall be \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_.00). Buyer shall pay the Purchase Price to Seller at Closing in the form of a check subject to the usual and customary prorations. Buyer shall allocate the Purchase Price as directed by Seller for proceeds due to Milwaukee Public Schools and to the Seller for sale expenses, fees and reimbursements.

(b) Earnest Money. Buyer shall tender to the Seller earnest money ("Earnest Money") in the amount of \$5,000.00 in good funds on or before a date that is not later than fifteen (15) days following the date of approval of this Agreement by the City Common Council. The Earnest Money is non-refundable except for default by the Seller. Earnest Money shall be held by the Seller in a Seller account. If this transaction fails to close as required hereunder, other than as a result of a default by Seller in which event the Earnest Money shall be returned to Buyer immediately, Seller shall retain the Earnest Money. If the Earnest Money is not timely paid, Seller may declare this Agreement terminated.

### **SEC. 4. CONVEYANCE OF PROPERTY**

(a) Closing. Closing on this transaction and conveyance of the Property from Seller to Buyer shall be at the City Real Estate Office at a date and time mutually agreed to by the parties, which date shall be on or before \_\_\_\_\_ ("Base Period"), provided:

1. such date is not more than twelve months following the date of approval of this Agreement by the City Common Council;
2. Buyer has satisfied the City Closing Contingencies in Section 4(c); and
3. is not in violation of Seller's policies pursuant to Section 4(j).

(b) Extension. If Buyer is unable to close on or before expiration of the Base Period, Buyer may submit a written request to Seller's DCD Commissioner ("Commissioner") for one (1) six (6)-month extension of this Agreement ("Extended Period") from the, a \$500.00 renewal fee and a progress report of Buyer's efforts to obtain Final Plans and firm financing. The Commissioner shall grant the Extended Period if Seller is satisfied that Buyer is making progress to obtain Final Plans and financing. The renewal fee shall not be credited toward the Purchase Price.

(c) Seller Closing Contingencies. Notwithstanding anything to the contrary contained herein, the Seller's duty to Close and convey the Property is contingent upon:

1. Financing and Equity. Buyer submitting to DCD Real Estate Section evidence of full project financing without contingencies and equity in an amount equal to the Final Budget and that is satisfactory to Seller;
2. Final Plans. Approval of Final Plans by DCD's Design Review Team.
3. Building Permits. Buyer obtaining building permits for approved Final Plans.
4. SBE. Buyer meeting with OSBD and executing an SBE Agreement acceptable to OSBD.

(d) Form of Deed. Seller shall, at Closing and upon submission of the Purchase Price, convey the Property to Buyer by Quit Claim Deed and Restrictive Covenants ("Deed") in an "as is, where is" condition with all faults and defects, known or unknown, physical or otherwise, including but not limited to environmental or geotechnical defects, whether disclosed or not disclosed, known or not known, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims, including any action based on non-disclosure. The conveyance and title shall, in addition to the provisions of Section 15 of this Agreement and all other conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement, be subject to:

1. Performance requirements of this Agreement;
2. Applicable statutes, orders, rules and regulations of the Federal Government and State of Wisconsin, and laws and ordinances of the City of Milwaukee, including zoning, building and land subdivision laws and regulations;
3. All easements of record;
4. A restriction that the Property must be taxable for property-tax purposes. The restriction shall require that no owner or occupant of the Property shall apply for, or seek, or accept, property-tax exemption (whether under Wis. Stat. § 70.11 or otherwise) for the Property, or any part thereof. This restriction shall be a permanent covenant that runs with the land, and may only be released by resolution passed by the City's Common Council.
5. A restriction requiring that the Property cannot be used for school purposes. This restriction shall be a permanent covenant that runs with the land, and may only be released by resolution passed by City's Common Council.
6. Any recorded or unrecorded rights or interests of any person, entity or utility in any vacated alley, street, or public right-of-way at the Property including rights and interest of persons under Wis. Stat. § 66.1005(2).
7. Matters that would be revealed by an ALTA survey including, but not limited to, encroachments from the Property to a public right of way or adjacent property or encroachments on the Property from adjacent properties.

(e) Proration of Taxes. There shall be no proration of real estate taxes as the Property is tax exempt.

(f) Recordation of Deed. Seller shall promptly file the Deed for recording with the Milwaukee County Register of Deeds or as permitted by the Municipal Code of Ordinances. The Buyer shall pay all costs for so recording the Deed. No real estate transfer fee is due and no real estate transfer return is required pursuant to Wis. Stat. Section 7.25(s) and Section 77.23 (2), respectively, unless Seller or City is a lender in the transaction.

(g) Other Closing Documents. Buyer shall execute at Closing an application for the Department of Neighborhood Services Property Recording Program and Vacant Building Registration and shall be solely responsible for all fees.

(h) Title Insurance. Seller shall procure and deliver to the Buyer for examination a preliminary commitment for title insurance prepared Capital Title and Closing Services, Inc. under Seller's master contract in the amount of the full Purchase Price, naming the Buyer as the insured. This commitment shall guarantee the Seller's title to be in the condition called for by this Agreement. Seller shall pay the base cost of title insurance. The cost of title updates, gap endorsements and special assessment letters shall be paid by Buyer.

(i) Special Assessments. Seller will be responsible for all special assessments levied as of the date this Agreement was authorized by Seller's Common Council. Buyer is responsible for all special assessments levied after that date. The Seller shall provide details of any known or contemplated special assessments at Closing. If outstanding special assessments for which the Seller is responsible exist at Closing, Seller shall grant a credit in the amount of such assessments against the Purchase Price. Buyer shall pay the assessment when billed. If the estimated assessment is greater than the Purchase Price, Seller shall notify the Department of Public Work to bill Seller for the special assessment. If the special assessment for which the Seller is responsible is billed to Buyer or inadvertently certified to the tax roll, Buyer shall provide the bill to Seller and Seller shall arrange for payment.

(j) Seller Policies. Buyer certifies that it as individual or member of a corporation or partnership is not now and will not

be at Closing in violation of the following Seller Policies:

1. Delinquent real estate or personal property taxes due the City of Milwaukee.
2. Building or health code violations that are not being actively abated.
3. Convicted of violating an order of the Department of Neighborhood Services or Health Department within 12 months preceding Closing.
4. Convicted of a felony crime that affects property or neighborhood stability or safety.
5. Outstanding judgment to the City of Milwaukee.
6. In Rem foreclosure by the City of Milwaukee within five years preceding Closing.

If Buyer is found to violate any of these Seller Policies, the Seller shall give Buyer notice to correct this condition by the expiration of the Base Period or Extended Period or other such period as determined by the Commissioner. If the violation is not corrected within the specified period, this Agreement for Sale may be canceled and the Earnest Money and renewal fees, if any, shall be retained by the Seller as liquidated damages.

(k) Agreement to be Recorded Against Title. At Closing, and before recording the Deed, Seller shall record this Agreement against the Property in the Register of Deeds Office at Buyer's expense, and the Property title will be encumbered by it until issuance of the Certificate defined below

## **SEC. 5. PERFORMANCE DEPOSIT**

The Buyer shall deliver at Closing a Performance Deposit in the amount of Ten Thousand and No/100ths (\$10,000.00) Dollars ("Deposit"). The Deposit shall serve as security for the performance of the obligations of the Buyer to construct as provided hereinafter. The Seller shall authorized return of the Deposit concurrently with its formal approval of the Certificate pursuant to Section 7 or shall retain the Deposit as liquidated damages in accordance with the provisions of Sections 7 and 15. No interest shall be paid on the deposit. All or part of the Deposit may be retained by the Seller if Buyer fails to complete the Project according to the time schedule provided in Section 2.

## **SEC. 6. SITE PREPARATION AND CERTAIN OTHER ACTION BY SELLER**

(a) Work To Be Performed By Seller. The Seller shall without expense to Buyer, prepare the Property for redevelopment by the Buyer in the following manner:

1. The Property will be conveyed to Buyer in "as is, where is" condition. With all faults and defects (including title, geotechnical and environmental), known or unknown, detected or undetected, physical or otherwise, and without warranty or representation, whatsoever, express or implied except as expressly set forth in this Agreement.
2. Buyer shall be responsible for all site development expenses, including, but not limited to, extension of water and sewer laterals to the Property and the provision or replacement of sidewalks and curb cuts.
3. Seller discloses that the Property may contain old building foundations, rubble and debris from prior buildings that may have been demolished. Buyer agrees to accept the Property "as is, where is" and is solely responsible for conducting its own geotechnical investigation to determine the bearing capacity of the soil and for all site excavation, debris removal, fill and development expenses.
4. Seller has provided to Buyer and Buyer acknowledges receipt of the following environmental reports:
  - a. Phase I Environmental Site Assessment dated December 17, 2004 and prepared by Seller's Health Department and DCD.
  - b. Asbestos Inspection and Management plan dated November 7, 2002. Note this was not a destructive survey and no hidden asbestos containing materials were identified.

These reports are provided for informational purposes. Provision of these reports does not affect or impact the "as is, no representation or warranty" nature of this transaction, and neither Seller nor the City warrants the contents, conclusion or accuracy of them.

5. If Buyer desires to obtain a Phase I assessment, such report shall be at Buyer's sole expense. Buyer is encouraged to use an environmental consultant under a master contract with Seller if Seller be asked to rely on the report.

6. No additional environmental investigation shall be conducted by the Seller. Buyer agrees to accept the Property in its "as is, where is" condition including all environmental conditions, known or unknown, disclosed or not disclosed.

(b) Right of Entry for Utility Service. The Seller reserves for itself, the City, and any public utility company as may be appropriate, the unqualified right to enter upon the Property at all reasonable times for the purpose of reconstructing, maintaining, repairing or servicing the public utilities located within the Property boundary lines and provided for in the easements described or referred to in Paragraph (a), Section 2 hereof. This right-of-entry shall not interfere with Buyer's use of the Property.

(c) Buyer Not to Construct Over Utility Easements. The Buyer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in Paragraph (a), Section 2 hereof, unless such construction is provided for in such easement or has been approved by the City. If approval for such construction is requested by the Buyer, the Seller shall use its best efforts to assure that such approval shall not be withheld unreasonably.

(d) Access to Property. Prior to the conveyance of the Property to Buyer, the Seller shall permit representatives of the Buyer to have access to any part of the Property as to which the Seller holds title, at all reasonable times for the purpose of obtaining data and making various tests that necessary to carry out the Agreement upon receipt by the Seller of a written request for such entry and submittal of evidence of insurance according to the Seller's minimum guidelines. Such request and evidence of insurance must be satisfactory to the Seller in form and substance prior to the Seller granting such access. After the conveyance of the Property to the Buyer, the Buyer shall permit the representatives of the Seller, or the City upon five (5) days prior written notice access to the property at all reasonable times which any of them deems necessary for the purposes of the Agreement, including, but not limited to, inspection of all work being performed in connection with the construction as hereinafter defined. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Section.

## **SEC.7. CERTIFICATE OF COMPLETION**

Promptly after completion of the Project, including landscaping, in accordance with this Agreement, Buyer shall request in writing that the DCD Commissioner issue a Certificate and return the Deposit. This Certificate shall be a conclusive determination of satisfaction and termination of the covenants in the Agreement and the Deed with respect to the obligations of the Buyer and its successors and assigns to construct and the dates for the beginning and completion thereof.

Buyer's request shall include a Project summary on final project costs, dates for commencement and completion, occupancy summary and SBE participation. Buyer shall permit Seller representatives to inspect the Project within thirty (30) days following receipt of Buyer's request to determine if the work has been completed according to Seller-approved Final Plans and this Agreement. If the Project is determined to be in conformance, the request for the Certificate shall be presented to the Seller for its formal approval at the next available regularly schedule meeting of the Seller. The Seller shall execute such Certificate within thirty (30) days of its authorization and shall present the Certificate for recording to the Register of Deeds at Seller's expense. If the Seller shall refuse or fail to authorize this Certificate, the Seller shall within thirty (30) days of the Project inspection provide Buyer with a written statement indicating in adequate detail how the Buyer has failed to complete the Project in conformance with Final Plans or this Agreement, or is otherwise in default, and what measures or acts are necessary, in the opinion of the Seller, for the Buyer to take or perform in order to obtain the Certificate. Concurrent with Seller's consideration of the request for the Certificate, the Seller shall consider return of the Deposit. All or part of the Deposit may be retained by the Seller if the project is not completed according to the schedule specified in Section 2. A check for the amount of Deposit authorized for return by the Seller shall be provided within ten (10) days of authorization by the Seller.

## **SEC. 8 RESTRICTIONS ON USE**

The Buyer agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, to:

- a. Devote the Property only to and in accordance with the uses specified in this Agreement; and
- b. Not discriminate upon the basis of race, color, creed, sex, or national origin in the sale, lease or rental, or in the use or occupancy of the Property or any improvements located or to be erected thereon, or any part thereof.
- c. Comply with the regulations issued by the Secretary of Housing and Urban Development set forth in 37 C.F.R. 22732-3 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards.
- d. Comply with all requirements of the Americans with Disabilities Act of 1990, U.S.C. #12101, et. seq.

## **SEC. 9. COVENANTS BINDING UPON SUCCESSORS IN INTEREST: PERIOD OF DURATION**

It is intended and agreed that the covenants provided in Sections 8 and 23 shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Seller, its successors and assigns, the City, and any successor in interest to the Property, or any part thereof, and the United States (in the case of the covenant provided in subsection (b) of Section 8), against the Buyer, its successors and assigns, and every successor in interest to the Property or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the covenant provided in subsection (b) of Section 8 shall remain in effect without limitation as to time.

## **SEC.10. PROHIBITION AGAINST TRANSFER OF PROPERTY**

The Buyer has not made or created, and (except as permitted by Section 11) will not, prior to the completion of the Project as certified by the Seller, make or suffer to be made any sale, assignment, conveyance, lease or transfer in any other form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or contract or agree to do any of the same, without the prior written approval of the Seller, provided that Buyer may assign or transfer to an entity which has the substantially similar ownership as Buyer.

## **SEC. 11. LIMITATION UPON ENCUMBRANCE OF PROPERTY**

Prior to issuance of the Certificate, neither the Buyer nor any successor in interest to the Property shall engage in any financing or any other transaction creating any mortgage or other encumbrances or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property except for the purposes only of obtaining (a) funds only to the extent necessary for the construction provided in Section 1 and (b) such additional funds, if any, in an amount not to exceed the Purchase Price paid by the Buyer to the Seller. Until issuance of the Certificate, the Buyer (or successor in interest) shall notify the Seller in advance of any financing secured by mortgage or other similar lien instrument it proposes to enter into with respect to the Property and of any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of the Buyer or otherwise.

## **SEC. 12. MORTGAGEES NOT OBLIGATED TO CONSTRUCT**

Notwithstanding any of the provisions of this Agreement, including but not limited to those which are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Property or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall not be obligated by the provisions of this Agreement to complete the construction or to guarantee such construction; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder.

### **SEC. 13. ENFORCED DELAY IN PERFORMANCE**

Neither the Seller nor the Buyer, nor any successor in interest, shall be considered in breach or default of its obligations with respect to the preparation of the Property for the Project or commencement and completion of the Project, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence. The time for the performance of the obligations shall be extended for the period of the enforced delay, as determined by the Seller, if the party seeking the extension shall request it in writing of the other party within ten (10) days after the beginning of the enforced delay.

### **SEC. 14. NO DAMAGES FOR DELAY**

Buyer shall not be entitled to recover any damages from the City arising from or attributable to any delays in construction upon or development of the Property, unless the City caused the delay in question.

### **SEC. 15. REMEDIES**

(a) General. In the even of breach of this Agreement, the parties have their respective rights hereunder, and those available at law and in equity. Seller expressly retains all rights under Wis. Stat. Section 893.80

(b) Prior to Conveyance. If, prior to Seller's conveyance of the Property, Buyer assigns or attempts to assign this Agreement or any rights hereunder or fails to pay the Purchase Price and take title to the Property upon Seller's offer of conveyance, the Seller may, at its option, terminate this Agreement and retain any fees submitted by Buyer as liquidated damages.

(c) Notice of Breach and Right to Cure. Except as otherwise provided herein, in the event of default or breach ("Default") by either party hereto, the defaulting party shall, upon written notice from the other, cure or remedy such Default within 30 days after receipt of notice and demand to cure providing, however, that if the Default is one that cannot reasonably be cured with said 30 days, the defaulting party must diligently and faithfully pursue cure, and if the Default is not then remedied or cured with a reasonable time, or if the defaulting party fails to faithfully and diligently pursue cure, then (in any of the events described above) the aggrieved party may institute such proceedings and/or take such action to secure any rights as the aggrieved party may have available to it hereunder or at law or in equity, including, but not limited to, an action to compel specific performance and/or seeking damages.

(d) Waiver. No delay, waiver, omission or forbearance on the part of any party to exercise any right or power arising out of any other party's Default shall be deemed a waiver by that party of such right or power against the other party for any subsequent Default.

(e) Seller's Retained Reversionary Interest.

1. Seller's Right to Reverter and Deposit. Notwithstanding anything to the contrary contained herein, or in the Deed, if subsequent to conveyance of the Property to Buyer and prior to issuance of the Certificate:
  - i. Buyer or any successor defaults on or violates its obligations under this Agreement with respect to the Project, including the nature of, and the dates for beginning and completion thereof of construction thereof, or abandons or substantially suspends construction other than suspension pursuant to Section 13, and any such default, violation, abandonment or suspension shall not be cured, ended or remedied with 90 days after Seller written demand so to do; or
  - ii. Buyer or any successor fails to pay real estate taxes, special assessment or special changes on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy, lien, or attachment to be made, or any materialman, mechanic, or construction lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessment shall not have been paid,

- or the encumbrance or lien removed or discharged or provision satisfactory to Seller made for such payment, removal or discharge, within 90 days after Seller written demand so to do; or
- iii. there is any transfer of the Property or any part thereof in violation of this Agreement, and such violation shall not be cured within 90 days after Seller written demand;

then the Seller shall have the right to reenter and take possession of the Property and to record against the Property in the Milwaukee County Register of Deeds Office a "Notice of Reverter." Buyer agrees that the recording of such Notice of Reverter shall have the effect of delivering and recording a deed from Buyer to Seller, and shall automatically terminate all of the Buyer's rights, title and interest in and to the Property (and any interest of any successor that has taken title from or through Buyer, except Permitted Successors) and revert in Seller, subject to rights of Permitted Successors, the full estate conveyed by the Deed. The intent of this provision, together with other provisions of this Agreement, is that the conveyance of the Property to Buyer pursuant and subject to this Agreement shall be made upon a condition subsequent to the conveyance that in the event of any default, failure, violation, breach or other action or inaction by Buyer specified in subsections (a), (b) or (c) above, and the failure on the part of Buyer to remedy, end, abrogate or otherwise cure such default, failure, violation, breach or other action or inaction, within the period and in the manner stated in such subdivisions, Seller at its option may effect a termination of the estate conveyed to Buyer in favor of Seller in which case all rights and interests of Buyer (and of any successor or assign to Buyer or the Property, except Permitted Successors), shall revert to, and thereafter be solely and fully vested in, Seller. And such reversioning of title in Seller shall be subject to, limited by, and shall not defeat, render invalid or limit (a) the lien of any mortgage authorized by this Agreement, (b) any right or interest provided in the Agreement for the protection of the holder of such mortgage and (c) any right of any Permitted Successor, including any lessee or buyer authorized by this Agreement.

If Seller exercises its reversionary right as set forth above, Seller may also retain the Deposit.

Seller's reversionary right is a material provision of this Agreement, without which, Seller would not have entered into this transaction.

This Agreement is binding upon the parties hereto and their successors and assigns, including successors in interest to the Property. Notwithstanding the foregoing, until issuance of the Certificate, Buyer may not assign this Agreement or its rights hereunder without Seller's prior written consent.

#### **SEC. 16. RESALE OF REACQUIRED PROPERTY: DISPOSITION OF PROCEEDS**

Upon the reversioning in the Seller of title to the Property or any part thereof as provided in Section 15, Seller shall use best efforts to resell the Property or part thereof (subject to rights of Permitted Successors) as soon and in such manner as the Seller shall find feasible and consistent with the objectives of applicable law and of this Agreement to a qualified and responsible party or parties (as determined by the Seller) who will either (a) assume the obligation of making or completing the Project as shall be satisfactory to the Seller or (b) agree to undertake such other project at the Property as shall meet Seller's approval (or, alternatively, the Project with such modifications to which Seller may agree.

Upon Seller resale of the Property (or part thereof) the proceeds thereof shall be applied:

(a) First, to reimburse the Seller, on its own behalf or on behalf of the Seller, for all costs and expenses incurred by the Seller, including, but not limited to, salaries of personnel in connection with the reversion in title, management and resale of the Property or part thereof (but less any income derived by the Seller from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the Seller, an amount, if paid, equal to such taxes, assessments or charges (as determined by the City assessing official) that would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of reversioning of title thereto in the Seller or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to

obligations, defaults or acts of Buyer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Project (or such modified or alternate project as Seller may establish or to maintain the Property), and any amounts otherwise owing the Seller by the Buyer and its successors or transferee; and

(b) Second, to reimburse Buyer, its successor or transferee, up to the amount equal to the sum of the net Purchase Price paid by it for the Property (or allocable to the part thereof) and the cash, labor and material actually invested by it in performing any construction on or rehabilitation of the Property or part thereof, less any gains or income withdrawn or made by it from the Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by Seller as its property.

**SEC. 17. CONFLICT OF INTEREST:  
SELLER REPRESENTATIVES NOT INDIVIDUALLY LIABLE**

No Seller member, official or employee shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No Seller member, official or employee shall be personally liable to the Buyer or any successor in the event of any Seller default or breach or for any amount which may become due to the Buyer or successor or on any obligations under the terms of this Agreement.

**SEC. 18. INDEMNIFICATION**

Buyer agrees to defend, indemnify, and hold harmless Seller, its respective officers, agents and employees, from and against all claims, demands, damages, liability, suits, judgments and decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever that may come or be asserted against Seller on account of: (a) Buyer's (or anyone acting for or at the direction of, or anyone claiming by, through, or under Buyer) preacquisition entry onto or investigations at the Property; and (b) if Buyer closes on this transaction and becomes owner of the Property, the condition of the Property – including environmental and geotechnical. The provisions in this Section shall survive completion of the Project, recording of the Certificate, and any termination of this Agreement

**SEC. 19. PROVISIONS NOT MERGED WITH DEED**

No provision of this Agreement is intended to or shall be merged by reason of any deed transferring title to the Property from the Seller to the Buyer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

**SEC. 20 GOVERNING LAW**

This Agreement shall be construed according to Wisconsin Law.

**SEC. 21 PUBLIC RECORDS**

This Agreement and certain documents relating hereto are, or may be, subject to Wisconsin's Open Records Law (Wis. Stat. Chapter 19, Subchapter II and Wis. State. Section 19.36(3)) that includes records produced or collected hereunder. Buyer agrees to cooperate with Seller and the City if Seller or City receives a request under Wisconsin's Open Records Law for any such record.

**SEC. 22 SUCCESSORS AND ASSIGNS.**

This Agreement is binding upon the parties hereto and their successors and assigns, including successors in interest to the Property. Notwithstanding the foregoing, until issuance of the Certificate, Buyer may not assign this Agreement or its

rights hereunder without Seller's prior written consent.

**SEC. 23. APPROVALS**

In any instance in which Seller's approval or consent and/or the approval or consent of the Commissioner is required under this Agreement, such approval or consent shall not be unreasonably withheld or delayed.

**SEC. 24. NOTICES**

Notices required to be sent under this Agreement shall be in writing and given either by personal delivery, by certified mail postage prepaid, or by facsimile to the following individuals. Notices personally delivered shall be deemed delivered upon actual receipt or upon refusal to accept delivery. Notices sent by certified mail shall be deemed delivered two business days after mailing. Notices sent by facsimile shall be deemed delivered on the date of sending – providing, however, (i) any such notice is (and must be) sent between the hours of 9:00 A.M. and 4:00 P.M. on business days that the City's City Hall is open for business; and (ii) no error or similar message indicating inability to send is prompted by the sending of such notice by facsimile. Notice recipient and sending information may be changed from time to time by sending written notice of the same to all parties in accordance with this paragraph.

**If to Seller:**

City of Milwaukee  
Attn: City Real Estate Officer  
809 North Broadway, Milwaukee, Wisconsin 53202-3617  
Phone: 414-286-5730  
Facsimile: 414-286-0395

**If to Buyer:**

Contact Name \_\_\_\_\_  
Company \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_ Zip \_\_\_\_\_  
Phone: \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
Facsimile: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

**SEC. 25. SPECIAL PROVISIONS**

(a) The Buyer will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Buyer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Seller or the Wisconsin Department of Industry, Labor and Human Resources setting forth the provisions of this nondiscrimination clause.

(b) The Buyer will include the provisions of Paragraph (a) in every construction contract for this property, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provisions will be binding upon each such contractor or subcontractor, as the case may be.

## SEC. 26. COUNTERPARTS

The Agreement is executed in three (3) counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, The Buyer, \_\_\_\_\_, has hereunto  
set its hand this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
(BUYER)

By: \_\_\_\_\_

Title \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, \_\_\_\_\_  
and \_\_\_\_\_, to me known to be the person(s) who as Buyer executed the  
foregoing Contract for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

SEAL

Notary Public,  
\_\_\_\_\_ County  
My commission \_\_\_\_\_

Approved by the Common Council of the City of Milwaukee on \_\_\_\_\_, 2015, by adoption of Resolution No. \_\_\_\_\_.

IN WITNESS WHEREOF, Elaine M. Miller, Special Deputy Commissioner of the Department of City Development, on behalf of the City of Milwaukee has caused this Agreement to be duly executed in its name and on its behalf effective as of the date first written above.

f

**CITY OF MILWAUKEE (CITY)**

By \_\_\_\_\_  
Elaine M. Miller  
Title: Special Deputy Commissioner  
Department of City Development  
signed pursuant to Council File No. 041216

State of Wisconsin            )  
  ) ss.  
County of Milwaukee        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, Elaine M. Miller, to me known to be the Special Deputy Commissioner of the Department of City Development and being authorized so to do, executed the foregoing Agreement for the purposes therein contained for and on behalf of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

SEAL

\_\_\_\_\_  
Notary Public  
Milwaukee County  
My commission \_\_\_\_\_

This document was drafted by the Department of City Development, City of Milwaukee.

emm: 04/08/15

**EXHIBIT A**  
Description of Property

Exact description to be provided in preliminary title commitment

All that certain parcel or parcels of land located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

Lots 1 to 13, inclusive, and Lots 19 to 21, inclusive, in Block 4 of Cold Spring Heights and all of Lot 1 and the East 13.75 feet of Lot 2, in Block 4 of Sarnow's Subdivision and the vacated east-west alley adjoining, in the Northwest  $\frac{1}{4}$  and Southwest  $\frac{1}{4}$  of Section 24, Township 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Address: 1715 North 37<sup>th</sup> Street  
Tax Key Number: 366-0384-110-1